

**TAX PHASE-IN AGREEMENT BETWEEN
LOWE'S HOME CENTERS, INC.
AND THE CITY OF SAN ANTONIO**

1. PARTIES

THIS AGREEMENT (the "Agreement") is entered into on this 1st day of September 2006, by and between LOWE'S HOME CENTERS, INC. (hereinafter referred to as "LOWE'S"), a North Carolina corporation, as real property and personal property owner, and the CITY OF SAN ANTONIO, a municipal corporation, (hereinafter referred to as the "CITY"), acting by and through its City Manager.

2. AUTHORIZATION AND FINDINGS

A. This Agreement is entered into pursuant to the following authorities:

1. The Texas Property Redevelopment and Tax Abatement Act of 1987, V.A.T.S. Tax Code, Chapter 312, as amended;

2. CITY COUNCIL RESOLUTION No. 89-07-12, dated the 15th day of February 1989, and most recently revised by ORDINANCE NO. 2006-06-15-0721 on June 15, 2006, together which established the City of San Antonio Guidelines and Criteria for Tax Phase-In and Reinvestment Zones, (hereinafter referred to as the "Guidelines and Criteria");

3. CITY COUNCIL ORDINANCE NO. 2006-06-29-0738, dated June 29, 2006, which designated the LOWE'S Reinvestment Zone (the "Zone"); and

4. CITY COUNCIL ORDINANCE NO. 2006-06-29-0739, dated June 29, 2006, which specifically approved this Agreement and authorized execution hereof.

B. The City Council, by its approval of this Agreement, hereby finds that the terms of this Agreement, and the property subject to it, generally meet the Guidelines and Criteria as adopted by the City Council and has approved exceptions regarding job creation and term. The City Council further finds that (a) the approval of this Agreement will not have any substantial long-term adverse effect on the provision of CITY services or the CITY'S tax base; and (b) the planned use of the Property (defined below) inside the Zone by LOWE'S for the uses contemplated herein will not constitute a hazard to public safety, health or morals.

3. PROPERTY

A. The taxable real property which is the subject of the Reinvestment Zone of this Agreement is located in Westover Hills on a 10.00 acre, or 435,604 square feet tract of land, being out of the remainder of a 403, 896 acre tract, recorded in Volume 5191, Page 963-1007 of the Official Public Records of Real Property of Bexar County, Texas in New City Block (N.C.B.) 17642 of the City of San Antonio out of the B.B.B. & C.R.R. Survey No. 389, Abstract 96, County Block 4417 of Bexar County, Texas. The CITY and LOWE'S acknowledge that the 10.00 acre tract described in Exhibit A, attached hereto and incorporated herein shall be appraised by the Bexar Appraisal District as a separate parcel of land on the January 1st following the transfer of the tract to LOWE'S, or January 1, 2007. With a real property improvement investment of approximately thirty million dollars (\$30,000,000.00) and a personal property improvement investment of approximately thirty million dollars (\$30,000,000.00), LOWE'S will construct a new Tier III Data Center Facility and install new machinery and

equipment in an approximately seventy thousand (70,000) square-foot facility to house approximately twenty two (22) non-temporary, full-time positions by December 31, 2009, which LOWE'S will own, hold an interest in or otherwise control (the "Facility"). The Facility will be used as a data center. LOWE'S will conduct, in the Facility, normal business activities including, but not limited to, those activities offered for geographic redundancy, critical load balancing and recovery capabilities in support of their subsidiary retail home improvement stores nationwide. (hereinafter collectively referred to as the "Business Activities") or the normal Business Activities of a Related Organization (defined in Article 5, Paragraph I) so long as such Business Activities include the normal Business Activities of a data center or similar activity. LOWE'S shall invest approximately thirty million dollars (\$30,000,000.00) in real property improvements with a personal property improvement investment of approximately thirty million dollars (\$30,000,000.00) by December 31, 2009. LOWE'S shall be entitled to tax abatements authorized herein for the real property improvements and personal property improvements above the Base Year Value (as defined in Article 6, Paragraph A) (such real property and personal property being collectively referred to as the "Property") if LOWE'S or a Related Organization undertakes Business Activities in accordance with the terms of this Agreement in the Zone. LOWE'S understands and accepts that there shall be no abatement of taxes for the land, inventory or supplies.

B. LOWE'S will request that Bexar Appraisal District create an "Improvements Only" account for the real property improvements and personal property improvements (the "Property") that are subject to this Agreement and provide the account numbers to the CITY. LOWE'S acknowledges that Bexar Appraisal District will also create a separate account for the 10.00 acre tract described herein and not subject to tax abatement by the CITY.

4. LOWE'S REPRESENTATIONS

A. LOWE'S represents that it has no knowledge that any interest in the Property is presently owned, held or leased by a member of the San Antonio City Council, Zoning Commission, Planning Commission, the City's Economic Development Department, or any other City officer or employee. LOWE'S further represents that they shall not knowingly sell, lease or otherwise convey such an interest to a member of the San Antonio City Council, the Zoning Commission, the Planning Commission, the City's Economic Development Department or any other City officer or employee, as long as this Agreement remains in effect. LOWE'S also represents that it, its employees and officials are in compliance with the CITY's Ethics Code.

B. LOWE'S represents that there is no litigation pending against LOWE'S for any violations under the Occupational Safety and Health Act.

5. TERMS OF THE AGREEMENT

A. Obligations of LOWE'S. For LOWE'S to receive the tax abatement authorized herein: (1) LOWE'S shall own, hold an interest in or otherwise control the Facility and Property and shall invest a minimum of thirty million (\$30,000,000.00) in real property improvements, thirty million dollars (\$30,000,000.00) in personal property improvements for the Facility described in Article 3, Paragraph A by December 31, 2009; (2) LOWE'S shall establish and maintain a minimum of twenty two (22) non-temporary, full-time positions by December 31, 2009; (3) LOWE'S shall occupy and use the Facility for its Business Activities and otherwise comply with the applicable terms of this Agreement.

B. Wage Requirement. LOWE'S covenants and agrees that it shall comply with the wage standard policy specified in the City of San Antonio Guidelines and Criteria for Tax Phase-In and Reinvestment Zones, attached hereto as Exhibit "B" and incorporated herein for all

purposes, at the time the City Council authorized execution of this Agreement. LOWE'S understands and agrees that the minimum cash wage for all employees is nine dollars and six cents (\$9.06) per hour and after one year, the hourly earnings for seventy percent (70%) of the new jobs is not less than eleven dollars (\$11.00) per hour as of the time City Council authorized execution of this Agreement.

C. Full-Time Position. For the purposes of this Agreement, a full-time position shall be equivalent to two thousand eighty (2,080) straight-time paid hours in a fiscal year. LOWE'S shall be provided a reasonable time to replace terminated or resigned employees in order to maintain the required number of full-time positions.

D. Employee Benefits. LOWE'S covenants and agrees that it shall offer all of its non-temporary full-time employees at the Facility the opportunity to elect to receive substantially similar employee benefits as those employee benefits offered to similarly situated employees of LOWE'S, as those benefits are currently described in Exhibit "C", attached hereto and incorporated herein, and as they may be modified from time to time corporate-wide. LOWE'S covenants and agrees that, during each year of the Term of this Agreement, it will continue to offer all of its full-time employees at the Facility the opportunity to elect to receive an employee benefits package that is substantially similar to either (a) the benefits package described in Exhibit "C" or (b) those employee benefits offered to similarly situated LOWE'S non-temporary full-time employees generally. LOWE'S further covenants and agrees that during the Term of this Agreement all of its full-time employees at the Facility shall be offered the option to elect to participate in a health plan which provides coverage for their eligible dependents on terms substantially similar to the coverage provided to the eligible dependents generally of LOWE'S non-temporary full-time employees. Employees may be required to pay all or a portion of the cost of certain benefits.

E. Compliance with Employment Regulation. LOWE'S covenants and agrees that it shall comply with all applicable federal and state laws governing the employment relationship between employers and employees in all material respects. A non-exclusive list of such laws is attached hereto as Exhibit "D" and incorporated herein.

F. Compliance with Business Activities Regulation. LOWE'S also covenants and agrees that it shall conduct its Business Activities (as defined in Article 3, Paragraph A) at the Facility in accordance with all applicable federal, state and local laws in all material respects.

G. Compliance with Construction Regulation. LOWE'S shall construct any improvements made to the Facility in accordance with all applicable federal, state and local laws including, but not limited to, Texas Commission on Environmental Quality regulations, Bexar County and City of San Antonio laws, Building Codes and ordinances, Historic Preservation and Urban Design ordinances, flood, subdivision, building, electrical, plumbing, fire and life safety codes and regulations, current and as amended in all material respects.

H. Improvements Completion. LOWE'S shall substantially complete real property and personal property improvements by December 31, 2008 and will house LOWE'S Business Activities (as defined in Article 3, Paragraph A) in the Facility in the LOWE'S Reinvestment Zone. LOWE'S shall be entitled to such additional time to complete said improvements as may be required due to any "Force Majeure" event, so long as LOWE'S reasonably diligently pursues said completion of improvements. For purposes of this Section 5.H., (i) "Force Majeure" shall be as defined in Article 8 below, and (ii) the CITY shall have the final determination, to be exercised reasonably and in good faith, whether to grant an extension of time for said completion

for reasons of Force Majeure and the length of such extension. LOWE'S shall notify the CITY of the completion of the real property and personal property improvements by sending notice to the address listed in Article 9 (Notice) within three (3) months of completion.

I. Authorized Business Activities. Except as provided herein, LOWE'S covenants and agrees that it shall use the Property at the Facility only to conduct its Business Activities (as defined in Article 3, Paragraph A). Without additional consent or approval by the City Council, (i) a parent, subsidiary or affiliate organization of LOWE'S or new entity created as a result of a merger, acquisition, or other corporate restructure or reorganization of LOWE'S, or any component thereof (hereinafter "Related Organization"); or (ii) an entity which acquires all or substantially all of the retail stores operated by LOWE'S in Texas ("Successor"); and subject to City Council approval, duly evidenced by ordinance, (iii) an entity which acquires the Facility and Property and then contracts with LOWE'S to provide substantially the same services as previously provided to LOWE'S by the Facility ("Contractor") may occupy and use the Property and the Facility for such Related Organization's, Successor's or Contractor's normal business activities, so long as such business activities are those of data storage or related high tech use, or similar or comparable to the Business Activities of LOWE'S at the Facility. To be eligible for tax abatements as provided in this Agreement, such Related Organization shall comply with all applicable terms of this Agreement. Except as authorized above, LOWE'S covenants and agrees not to change the principal use of the Property and Facility without prior approval by the City Council, as evidenced in a duly approved ordinance.

J. Maintenance Obligations. LOWE'S covenants and agrees that they shall maintain the Property and the Facility in good repair and condition during the Tax Phase-In Period, normal wear and tear and damage by fire or other casualty not caused as a result of the negligence, intentional act or misconduct of LOWE'S excepted. Compliance with the maintenance obligations imposed herein shall be presumed if LOWE'S follows its normal and customary maintenance procedures and schedules.

K. Inspections by the City. Upon five (5) business days prior notice to LOWE'S by the CITY, LOWE'S covenants and agrees that they shall allow designated representatives of the CITY access to the Property and the Facility during normal business hours for inspection to determine if the terms and conditions of this Agreement are being met. (This inspection is independent of CITY'S police powers to inspect for purposes of assuring compliance with applicable City Codes and Ordinances). The CITY's access to LOWE'S books and records will be limited to information needed to verify that LOWE'S is and has been conducting Business Activities, and to verify the number of non-temporary full-time positions at the Facility. Any information that is not required by law to be made public shall be kept confidential by CITY. Should any good faith dispute or question arise as to the validity of the data provided, the CITY reserves the right to require LOWE'S to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of LOWE'S. CITY representatives may be accompanied by LOWE'S representatives and such inspections shall be conducted in such a manner as to (a) not unreasonably interfere with the operation of the Property or the Facility; and (b) comply with LOWE'S reasonable security requirements.

L. Disclosure to Bexar Appraisal District. During the term of this Agreement, LOWE'S covenants and agrees to furnish, as applicable, by April 30th of each year, the Chief Appraiser of Bexar Appraisal District with information outlined in Chapter 22, V.A.T.S. Tax Code, as amended, as may be necessary for the tax phase-in and for appraisal purposes.

M. Disclosure to CITY. LOWE'S covenants and agrees that it shall provide, within thirty (30) days after June 30 and December 31 of each year, the CITY's Director of Economic Development with a semi-annual certification from an officer of LOWE'S attesting to the number of jobs ("positions") created and maintained, as well as wages paid, by LOWE'S at the Facility as of such dates. LOWE'S shall also submit this information to the CITY upon request, as deemed necessary at the reasonable discretion of the CITY, during the term of this Agreement. The information provided shall be on the forms set forth in, or substantially similar to the forms set forth in, Exhibit "E" (attached hereto and incorporated herein), as amended.

N. Hiring Goals for Economically Disadvantaged Workers. LOWE'S covenants and agrees to make a good faith effort to hire Economically Disadvantaged Individuals to hold at least twenty-five percent (25%) of the new non-temporary full-time positions required to be employed at the Facility, as follows:

1. As used herein, "Economically Disadvantaged Individual" shall mean a person:
 - a. who was unemployed for at least three consecutive months immediately prior to being hired by LOWE'S at the Facility;
 - b. who receives, or is a member of a family which receives, cash welfare or other public assistance benefits under a federal, state, or local program;
 - c. who has, or is a member of a family which has, received a total family income for the six-month period prior to being hired by LOWE'S (exclusive of unemployment compensation, child support payments and public assistance payments) that, in relation to family size, did not exceed the greatest of the following:
 - (i) the official poverty line, as defined by the Director of the Office of Management and Budget, and revised annually in accordance with §672(2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. §9902(2));
 - (ii) 70 percent of the lower living standard income level; or
 - (iii) the level for moderate income as defined by the United States Department of Housing and Urban Development;
 - d. whose residence is in the CITY's State Enterprise Zone areas that include all census tract block groups in which at least 20% of the residents exceed the federal poverty level. These census tract block groups can be found at www.txed.state.tx.us/TexasEnterpriseZone by clicking on "Census Tract Zones";
 - e. is receiving or has been determined within the six-month period prior to the application for the program involved to be eligible to receive food stamps pursuant to the Food Stamp Act of 1977;
 - f. qualifies as a homeless individual under subsections (a) and (e) of §103 of the Stewart B. McKinney Assistance Act;
 - g. is a foster child on behalf of whom state or local government payments are made;

h. is an individual with a disability whose own income meets or exceeds the requirements of subsections (c)(i) or (c)(ii) above, but who is a member of a family whose income does not meet such requirements.

2. LOWE'S shall consult with Alamo WorkSource ("AWS"), which is capable of identifying those Economically Disadvantaged Individuals who are qualified for the non-temporary full-time employment positions LOWE'S will seek to fill from time to time.

3. LOWE'S shall from time to time inform AWS of job openings and the qualifications for each such job, providing the same type of information with the same level of detail as LOWE'S would normally use in recruiting for such a position. AWS shall disseminate information about LOWE'S job opportunities to Economically Disadvantaged Individuals, recruit and screen such Economically Disadvantaged Individuals, and refer potential candidates for employment to LOWE'S. Such referrals shall be accompanied by such personnel information as LOWE'S may prescribe so the potential candidates can be evaluated by LOWE'S.

4. In its sole and complete discretion LOWE'S shall:

a. determine which Economically Disadvantaged Individuals, if any, meet its hiring criteria for particular positions;

b. determine how many Economically Disadvantaged Individuals, if any, to interview for particular positions; and

c. determine how many and which Economically Disadvantaged Individuals LOWE'S will hire for particular positions, if any.

5. LOWE'S shall have satisfied its obligations under Article 5, Paragraph N if it makes a good faith effort to hire Economically Disadvantaged Individuals. If LOWE'S consults with AWS in good faith to identify and interview those Economically Disadvantaged Individuals who are qualified for positions to be filled by LOWE'S, then such activity shall be deemed to be the good faith effort required herein. In addition, regardless of whether LOWE'S works with AWS, if LOWE'S meets the goal of hiring at least twenty-five (25%) Economically Disadvantaged Individuals, then such activity shall be conclusively deemed to have satisfied the good faith effort required by Article 5, Paragraph N. In determining whether LOWE'S meets the goal of hiring at least twenty-five percent (25%) Economically Disadvantaged Individuals, the calculation shall be calculated on a calendar year basis by the month of April.

O. Local Employment Goal. LOWE'S covenants and agrees to make a good faith effort to hire local employees for positions to fulfill its requirements under Article 5, Paragraph A. "Local" is defined, for the purposes of this Paragraph, as an employee whose principal residence is located within the city limits of the CITY or within the county limits of Bexar County.

P. Notification Requirement Regarding Sale, Transfer or Sub-lease of Facility or Property. LOWE'S covenants and agrees to notify CITY in writing at least 30 days prior to any sale, transfer or sub-lease of the Facility or Property during the Term. CITY shall not unreasonably withhold, condition or delay approval of any requests for Assignment of this Agreement by LOWE'S under Article 11 and any new purchaser or transferee requesting Assignment shall be bound by same.

Q. Notification Requirement Regarding Relocation or Cessation of Business. LOWE'S covenants and agrees to notify CITY in writing at least 30 days prior to Relocating or Ceasing its Business Activities (as defined in Article 7, Paragraphs B and C).

R. Penalty for Default/Termination. If, during this Agreement or within six (6) years after the end of this Agreement, LOWE'S fails to satisfy the requirements of Article 5, Paragraph A or Article 5, Paragraph B of this Agreement for a period of three (3) or more consecutive months, then the termination and recapture provisions of Article 7, Paragraphs E, F and I of this Agreement shall apply against LOWE'S.

S. Other Actions Resulting in Default/Termination. If, during this Agreement, and after the Cure Period (defined in Section 7), LOWE'S allows its ad valorem taxes due on the land, real and personal property or inventory and supplies related to the Facility to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest, or is in default with any loan which has been made by the San Antonio Development Agency, San Antonio Local Development Company, *dba* South Texas Business Fund, City of San Antonio Industrial Development Authority or any other CITY-sponsored loan/grant/bond program, then the termination and recapture provisions of Article 7, Paragraphs F and I of this Agreement shall apply.

6. TAX PHASE-IN

A. Term. The Tax Phase-In Period (the "Term") for the Property subject to this Agreement shall be for ten (10) years beginning on the January 1st following substantial completion of the Facility's construction. The base year for calculating the value of the Property shall be January 1, 2006 or Tax Year 2006 (the "Base Year"). The Base Year value will be the certified appraised value as of January 1, 2006.

B. Conditions Precedent. At the commencement of the Term, LOWE'S shall own, have an interest in or otherwise control the Property. LOWE'S shall also conduct its Business Activities in the Facility. A Tax Phase-In shall be granted in each year of the Term as described in Article 6, Paragraph C below.

C. Additional Conditions and Tax Phase-In Percentage. Provided that LOWE'S has invested a minimum of thirty million dollars (\$30,000,000.00) in real property improvements and thirty million dollars (\$30,000,000.00) in personal property improvements to the Facility by December 31, 2009, LOWE'S has satisfied Article 5, Paragraph A and Article 5, Paragraph B of this Agreement, LOWE'S uses the Facility for its Business Activities, and LOWE'S is otherwise in compliance with the conditions of this Agreement, then one hundred percent (100%) of the ad valorem taxes for the real property improvements and personal property improvements, above the Base Year Value, shall be abated during the Term. There shall be no abatement of taxes for land or pre-existing personal property, inventory or supplies.

D. Pre-Term Taxes. LOWE'S shall pay, or cause to be paid, to the CITY ad valorem taxes for real property, personal property and inventory and supplies assessed, if any and as applicable, by the CITY on the Property prior to the commencement of the Term.

E. Base Year Taxation. LOWE'S understands and agrees that the Base Year Value of the Property and the tax levy based on said Base Year Value of the Property in the Zone shall not decrease, but taxes may increase and that the amount of taxes paid by LOWE'S to the CITY attributable to the Property during the Term shall not be less than the amount of taxes attributable

to the Property paid to the CITY for the base year tax year, if any, except in the event of casualty or condemnation of the Facility in the Zone.

F. Protest Rights. LOWE'S shall have the right to protest appraisals of the Property, or any portion thereof, or the value of any improvements over and above the Base Year Value as applicable.

7. DEFAULT/TERMINATION/RECAPTURE

A. Relocation Defined. For purposes of this section, "Relocation" or "Relocate" shall mean LOWE'S or a Related Organization which has taken the place of LOWE'S: (i) relocating Business Activities to a location outside the CITY; or (ii) relocating Business Activities outside an approved Enterprise or Reinvestment Zone within the CITY.

B. Termination and Recapture of Taxes in Event of Relocation of Business Activities. If LOWE'S occupies and uses the Facility for its Business Activities and subsequently Relocates (as defined in this Article 7, Paragraph A) during the Term, except if such Relocation of Business Activities is caused by a Force Majeure, as defined in Article 8, then City Council shall have the right to terminate this Agreement and the Term. Said termination shall be effective for the calendar year during which the Property was no longer used for the required purposes stated herein. Upon said terminations, all ad valorem taxes on improvements to the real property, personal property and inventory and supplies otherwise abated for that calendar year and all previously abated ad valorem taxes on these improvements under this Agreement shall be recaptured (based on the table in Article 7, Paragraph I) and shall be paid to CITY within sixty (60) calendar days from the date of said termination notices to LOWE'S by CITY.

C. Termination and Recapture of Taxes in Event of Cessation of Business Activities. If LOWE'S occupies and uses the Facility for its Business Activities and subsequently ceases conducting Business Activities (or a substantial portion thereof) at the site for a continuous period of three (3) months during the Tax Phase-In Period for any reason, except if such cessation is caused by a Force Majeure as defined in Article 8, then the City Council shall have the right to terminate this Agreement and the Term. Said termination shall be effective for the calendar year during which the Property was no longer used for the required purposes stated herein. Upon said termination, all ad valorem taxes on improvements to the real property, personal property and inventory and supplies otherwise abated for that calendar year and all previously abated ad valorem taxes on these improvements under this Agreement shall be recaptured (based on the table in Article 7, Paragraph I) and shall be paid to CITY within sixty (60) calendar days from the date of said termination notices to LOWE'S by CITY.

D. Recapture of Taxes Following Term of Agreement. If the Term expires and LOWE'S Relocates (as defined in this Article 7, Paragraph A) or ceases to conduct Business Activities (as defined in this Article 7, Paragraph C) at the Facility, then the City Council shall also have the right to recapture from LOWE'S a percentage of the previously abated ad valorem taxes on improvements to the real property, personal property and inventory and supplies based on the table in Article 7, Paragraph I of this Agreement.

E. Termination and Recapture of Taxes for Failure to Maintain Minimum Number of Positions. If LOWE'S, a Related Organization or City-approved assignee fails to satisfy Article 5, Paragraph A above, calculated by the averaging of the two most current semi-annual Employee Wage Information for Tax Phase-In Request Forms, or substantially similar form, (Exhibit "E") for such calendar year of noncompliance, then for each such calendar year of

noncompliance, the tax abatement shall be reduced in the following tax year by the same percentage as the deficiency in the number of positions. For example, if LOWE'S establishes and maintains ninety percent (90%) of the minimum number of non-temporary full-time positions in a given year, LOWE'S shall be entitled to ninety percent (90%) of the ad valorem real and personal property improvement tax abatement for the Property for that following year, but subject to a floor of fifty percent (50%). In consideration of the specialty use of the Facility and the high per position investment by LOWE'S, if LOWE'S is short positions as of any particular time and such is due to the termination or resignation of employee(s), and LOWE'S is expending good faith effort toward the replacement of such employee(s), then the vacant full-time positions shall be included in the required full-time position count. If LOWE'S fails to establish and maintain at least fifty percent (50%) of the minimum number of non-temporary full-time positions in a given year then, at the option of City Council, this failure may be grounds for termination of this Agreement and the Term. Said termination shall be effective for the calendar year during which the number of permanent full-time positions stated herein are not established and maintained as required. Upon said termination, all ad valorem taxes on improvements to real property, personal property and inventory and supplies otherwise abated for that calendar year and all previously abated ad valorem taxes on these improvements under this Agreement shall be recaptured (based on the table in Article 7, Paragraph I) and shall be paid to CITY within sixty (60) calendar days from the date of said termination notices to LOWE'S.

F. Cure Period and Declaration of Default. During the Term, CITY may declare a default if LOWE'S fails to comply with any of the terms of this Agreement. Should CITY determine LOWE'S is in default under any of the terms of this Agreement, CITY will notify LOWE'S in writing at the address below in Article 9, and if said default is not cured within sixty (60) calendar days from the date of such notice (hereinafter the "Cure Period"), then City Council shall have the right to terminate this Agreement. CITY may extend the Cure Period if LOWE'S commences the cure within the Cure Period and LOWE'S is diligently pursuing such cure. If the Agreement is terminated as a result of default, all ad valorem taxes on improvements to real property, personal property and inventory and supplies will be due for the tax year during which the termination occurred and shall accrue without further abatements for all tax years thereafter; in addition, CITY shall have the right to recapture (based on the table in Article 7, Paragraph I) from LOWE'S all previously abated ad valorem taxes on the improvements to real property, personal property and inventory and supplies under this Agreement and said taxes shall be paid by LOWE'S within sixty (60) calendar days of receiving CITY'S written notification of recapture.

G. Additional Rights to Terminate. If after the Cure Period, LOWE'S allows its ad valorem taxes due on the Base Year Value of the improvements to real property, personal property and inventory and supplies to become delinquent and LOWE'S fails to timely and properly follow the legal procedures for their protest and/or contest, or is in default with any loan which has been made by the San Antonio Development Agency, San Antonio Local Development Company dba South Texas Business Fund, City of San Antonio Industrial Development Authority or any other CITY sponsored loan/grant/bond program, City Council shall have the right to terminate this Agreement under Article 7, Paragraph F. Taxes will then be due for the tax year during which the termination occurred and shall accrue without abatement for all tax years thereafter and all taxes previously abated by virtue of this Agreement will be recaptured (based on the table in Article 7, Paragraph I) and paid by LOWE'S within sixty (60) calendar days of receiving CITY'S notice of termination.

H. Termination in Event of Taking by Eminent Domain. If the Facility, or any portion of the Property in the Facility, is taken by any public or quasi-public authority under the power of

eminent domain, condemnation or expropriation, then the abatement of ad valorem taxes on the improvements to the Property shall terminate (only as to the portion of the Property or Facility affected by the taking), effective as of the calendar year during which the taking occurs, and there shall be no recapture of taxes. In such event, LOWE'S shall have the right to continue or to terminate this Agreement, for the remaining portion of the Property or Facility, without recapture or other penalty.

I. Calculation of Taxes Subject to Recapture. If LOWE'S fails to comply with any of the terms of this Agreement including, but not limited to, those pertaining to Article 7, Paragraphs A through H, then the City Council shall have the right to recapture from LOWE'S a percentage of the abated ad valorem taxes to improvements on real property, personal property and inventory and supplies based on the following table:

TERM YEAR	TOTAL TAX PREVIOUSLY ABATED SHALL BE MULTIPLIED BY:
1-10	100%
11-12	80%
13	60%
14	40%
15	20%
16	10%

FORMULA: The recapture formula shall be:

$$\begin{array}{ccccc} & & \text{Applicable Percentage} & & \text{Amount to be} \\ \text{Total Taxes Abated} & \times & \text{from above Schedule} & = & \text{Recaptured} \end{array}$$

CITY shall recalculate the amount of recapture pertaining to each tax year utilizing the above formula. A bill for each year will then be sent to LOWE'S:

J. Other Remedies Available. CITY shall have the right to seek any remedy at law to which it may be entitled, in addition to termination and/or recapture, if LOWE'S defaults under the terms of this Agreement. However, such termination and/or recapture shall be subject to any and all lawful offsets, settlements, deductions or credits to which LOWE'S may be entitled. The termination and/or recapture of taxes provided in this Article 7 are not applicable to situations involving minor changes to the description of the Property or Facility, non-material violations, Force Majeure, or changes in ownership or in management thereof, so long as LOWE'S, its parent, subsidiary, affiliate or its CITY-approved successor or assignee continues conducting Business Activities or other authorized activities thereon as provided hereinabove CITY waives any exemplary or punitive damages, any damages to the CITY'S economy (i.e., "lost profits"), any damages to reputation, and the right to specific performance to require LOWE'S to operate the Facility.

8. **AUTHORIZED RELIEF FROM PERFORMANCE (Force Majeure)**

For purposes of this section, "Force Majeure" is defined as an act of God, terrorism, war, social unrest, strike or natural disaster, explosion, casualty, accident, not due to negligence, intentional act or misconduct on the part of LOWE'S, and any other material third party

interference with LOWE'S ability to comply with this Agreement, the prevention of which is not reasonably within LOWE'S control. In addition to relief expressly granted in this Agreement, CITY shall grant relief from performance of this Agreement if LOWE'S is prevented from compliance and performance by an event of Force Majeure. The burden of proof for the need for such relief shall rest upon LOWE'S. To obtain release based upon this Article 8, LOWE'S must file a written request with the CITY'S Economic Development Department for processing to City Council for a decision, authorized by a duly approved Ordinance.

9. NOTICE

Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the party to whom the notice is given; (b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to such party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such party at the address hereinafter specified. Any notice mailed in the above manner shall be effective upon three (3) days after deposit into the custody of the United States Postal Service or one (1) day after deposit with such nationally recognized delivery service as applicable; all other notices shall be effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

TO LOWE'S:

- (Whether personally delivered or mailed):

LOWE'S HOME CENTERS, INC.
Attn: Site Incentives Manager
1605 Curtis Bridge Road, R.E.E.C. Dock
Wilkesboro, NC 28697

LOWE'S HOME CENTERS, INC.
Attn: Real Estate Legal Department
1605 Curtis Bridge Road, R.E.E.C. Dock
Wilkesboro, NC 28697

TO CITY:

- If mailed:

Economic Development Department
Attn: Director
P.O. Box 839966
San Antonio, Texas 78283-3966

- If by personal or overnight delivery:

Economic Development Department
Attn: Director
City Hall, 4th Floor
Military Plaza
San Antonio, Texas 78205

10. **CONDITION**

This Agreement is conditioned entirely upon the approval of the San Antonio City Council, as evidenced by duly approved Ordinance Number 2006-06-29-0739, dated June 29, 2006.

11. **ASSIGNMENT**

Except as otherwise expressly provided herein, this Agreement may be assigned or otherwise transferred only with City Council's prior approval (which approval shall not be unreasonably withheld, conditioned or delayed), as reflected in a duly adopted ordinance. LOWE'S must submit a written request to CITY for approval of the proposed assignment or other transfer at least thirty (30) days prior to the effective date of the assignment or transfer of any part of the Property or of the Facility; however, no City Council consent is required for an assignment or transfer to a parent of LOWE'S, a subsidiary of LOWE'S, an affiliate entity of LOWE'S, or to any new entity created as a result of a merger, acquisition or other corporate restructure or reorganization of LOWE'S. However, LOWE'S shall give CITY prior written notice of all assignments or other transfers that do not require City Council consent, as required under Article 5, Paragraph P. All future assignees shall be bound by all terms and/or provisions and representations of this Agreement. Upon any assignment approved, or deemed approved, hereunder, LOWE'S shall be automatically released as to all liabilities arising after the effective date of the assignment (but not before).

12. **GENERAL PROVISIONS**

A. None of the property improvements described in this Agreement are financed by tax increment bonds.

B. This Agreement is entered into subject to the rights of the holders of outstanding bonds of the CITY related to this project. No bonds for which the CITY is liable have been used to finance this project.

C. No amendment, modification, or alteration of the terms hereof shall be binding unless in writing dated subsequent to the date of this Agreement and duly authorized by the parties. LOWE'S acknowledges that City Council approval is required for any and all of these actions.

13. SEVERABILITY

In the event any section, subsection, paragraph, subparagraph, sentence, phrase or work herein is held invalid, illegal or unenforceable, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase or word. In such event there shall be substituted for such deleted provisions a provision as similar as possible in terms and in effect to such deleted provision that is valid, legal and enforceable. This Agreement constitutes the entire Agreement between the parties hereto relating to the subject matter contained herein and supersedes all prior, oral or written agreements, commitments or understandings with respect to the matters provided for herein.

14. ESTOPPEL CERTIFICATE

Any party hereto may request an estoppel certificate related to this project (hereafter referred to as "Certificate") from another party hereto so long as the Certificate is requested in connection with a bona fide business purpose. The Certificate, which if requested, will be addressed to a lender, subsequent purchaser or assignee of LOWE'S or other party designated by LOWE'S which shall include, but not necessarily be limited to, statements that this Agreement is in full force and effect without default, if such is the case, the remaining Term of this Agreement, the levels of tax abatement in effect, and such other matters reasonably requested by the party(ies) to receive the Certificate.

15. OWNER STANDING

LOWE'S, as a party to this Agreement, shall be deemed a proper and necessary party in any litigation questioning or challenging the validity of this Agreement or any of the underlying ordinances, resolutions, or City Council actions authorizing same, and LOWE'S shall be entitled to intervene in said litigation.

16. APPLICABLE LAW

This Agreement shall be construed under the laws of the State of Texas and is performable in Bexar County, Texas, the location of the LOWE'S Reinvestment Zone.

17. DUPLICATE ORIGINALS

This Agreement shall be executed in two duplicate originals, with a duplicate original going to each party.

[Signatures appear on following page]

[

LOWE'S HOME CENTERS, INC.
A North Carolina Corporation

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

7/20/06
new
BY:

David E. Shelton

David E. Shelton

SENIOR VICE PRESIDENT

Sheryl Scutley

CITY MANAGER

ATTEST:

Name:

Title:

Karin D. Bennett
Karin D. Bennett
Vice President

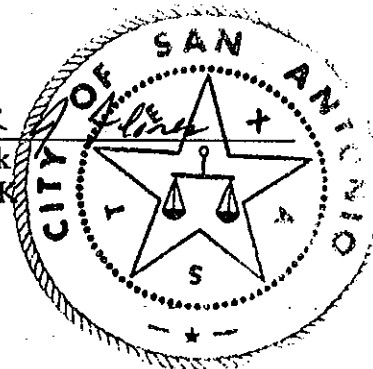
ATTEST:

Leticia Vacek

CITY CLERK

APPROVED AS TO FORM:

Michael Bernard
CITY ATTORNEY



**FIRST AMENDMENT TO THE TAX PHASE-IN AGREEMENT AND ECONOMIC
DEVELOPMENT GRANT AGREEMENT**

BETWEEN THE CITY OF SAN ANTONIO AND LOWE'S HOME CENTERS LLC

This First Amendment to the Tax Phase-In Agreement and Economic Development Grant Agreement (this "FIRST AMENDMENT") is entered into by and between the City of San Antonio ("CITY"), a municipal corporation governed by the laws of the State of Texas and Lowe's Home Centers, LLC, a North Carolina limited liability company, as successor to Lowe's Home Centers, Inc., a North Carolina corporation ("Lowe's"). Together, CITY and Lowe's may be referred to, herein, as "the Parties."

RECITALS

A. CITY and Lowe's entered into that certain Tax Phase-In Agreement and Economic Development Grant Agreement (the "Agreements") authorized by City of San Antonio Ordinances Nos. 2006-06-29-0739 and 2006-06-29-0740, passed and approved on June 29, 2006.

B. Prior to this First Amendment, the Agreements were in full effect and, subject to the terms of this First Amendment, Lowe's was in compliance with all terms and conditions of the Agreements.

C. The Parties, now seek to amend the terms and conditions of the Agreements as stated in this First Amendment and affirm that all other provisions of the Agreements remain in full force and effect.

AMENDMENT

NOW THEREFORE, the Parties hereby agree and amend as follows:

1. Definitions. All capitalized terms used in this First Amendment without definition herein shall have the meanings assigned to such terms in the Agreements.
2. Amendment. The Parties hereby mutually agree to amend the Agreements as follows:
 - (A) Section 5(C) of the Tax Phase-In Agreement shall be amended to provide for the definition of Full-Time Job to include positions filled by contract workers provided that such positions meet the wage and benefits requirements of Sections 5(B) and 5(D).
 - (B) Section 5(A)(2) of the Tax Phase-In Agreement shall be amended to provide for the reduction of non-temporary, Full-Time Positions from twenty-two (22) to fifteen (15).
 - (C) Section 6(C) of the Tax Phase-In Agreement shall be amended to provide for a reduction in the abatement percentage from 100% to a maximum of 68%.
 - (D) Section 2(C) of the Economic Development Grant Agreement shall be amended that no further grant payments or fee waivers will be payable to Lowe's for the remainder of the agreement term.

3. Effective Date. This First Amendment shall be effective upon passage of a duly authorized ordinance of the City Council of the City of San Antonio which shall be attached hereto and made a part of this First Amendment.
4. No Other Changes. Except as specifically set forth in this First Amendment, all of the terms and conditions of the Agreements shall remain the same and are hereby ratified and confirmed. The Agreements shall continue in full force and effect and with this First Amendment shall be read and construed as one instrument.
5. Choice of Law. This First Amendment shall be construed in accordance with and governed by the laws of the State of Texas.
6. Counterparts. This First Amendment may be executed in any number of counterparts, but all such counterparts shall together constitute but one instrument. In making proof of this First Amendment it shall not be necessary to produce or account for more than one counterpart signed by each party hereto by and against which enforcement hereof is sought.

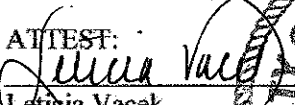
WITNESS HEREOF, the parties hereto have executed in triplicate originals this First Amendment on the 10th day of February, 2013.

CITY OF SAN ANTONIO

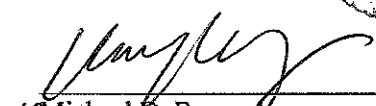
a municipal corporation

fn.

Sheryl L. Seulley
City Manager

ATTEST:

Leticia Vacek
City Clerk

APPROVED AS TO FORM:


Michael D. Bernard
City Attorney



LOWE'S HOME CENTERS, LLC, a North Carolina limited liability company, as successor to Lowe's Home Centers, Inc., a North Carolina corporation


Name: Gary E. Wyatt
Title: Senior Vice President

ATTEST:

Name:
Title:

mc
dm

STATE OF TEXAS

COUNTY OF BEXAR

§
§
§
§

**ECONOMIC DEVELOPMENT
GRANT AGREEMENT OF THE
CITY OF SAN ANTONIO**

This Economic Development Grant Agreement (hereinafter referred to as the "Agreement") is made and entered into by and between the City of San Antonio, a municipal corporation of the State of Texas, hereinafter referred to as "CITY", by and through its City Manager or her designee, and LOWES HOME CENTERS, INC., hereinafter referred to as "CONTRACTOR."

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, CITY is authorized to grant municipal funds in furtherance of public purposes for economic development projects; and

WHEREAS, in accordance with City of San Antonio City Ordinance No. 100684, CITY created an economic development program for the purpose of making such grants available; and

WHEREAS, CONTRACTOR is engaged in an economic development project that will be located within the city limits of the City of San Antonio and that will consist of the construction and operation of a data center which is anticipated to create 22 high-technology jobs with an average wage of \$51,700.00 and generate at least \$1,100,000.00 in annual payroll; and

WHEREAS, the construction of the data center and the creation of jobs will promote local economic development and stimulate business and commercial activity in the City of San Antonio; and

WHEREAS, CONTRACTOR has requested an economic development grant for the purpose of deferring costs associated with the construction and improvement of infrastructure related to the provision of utilities to the data center and the costs of permitting fees for construction activities at the project site; and

WHEREAS, CITY has identified funds available in the form of an economic development grant for CONTRACTOR to use to carry out this purpose; and

WHEREAS, the City Council of CITY authorized the City Manager or designee to enter into this Agreement with CONTRACTOR as reflected in Ordinance No. 2006-06-29-0740, passed and approved on June 29, 2006 and CITY now wishes to engage CONTRACTOR to carry out such project;

NOW THEREFORE:

The parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

SECTION 1. AGREEMENT PURPOSE

CONTRACTOR shall complete the construction and start-up of an economic development project, as described in CONTRACTOR's application for tax phase-in assistance, an economic development project consisting of the construction and operation of a data center within the city limits of the City of San Antonio, Texas (hereinafter referred to as the "Facility") that will create 22 high- technology jobs with an

average salary of \$51,700.00 which are anticipated to promote local economic development and stimulate business and commercial activity in the City of San Antonio (hereinafter referred to as the "Project"). The CITY is supporting the Project through an economic development grant to provide funding for the purpose of defraying costs associated with the construction and improvement of infrastructure related to the provision of utilities and the costs of permitting fees for construction at the project site as part of a larger incentive package intended, in part, to attract and retain high-impact companies that support the CITY's targeted industries and that may be used to leverage private, state or federal funds intended to achieve the same goals.

CITY acknowledges that CONTRACTOR is relying upon the funds to be generated by this Agreement in deciding to locate a national data center in San Antonio over competing cities and that these funds are a material part of a comprehensive economic development package necessary to support CONTRACTOR's location decision.

SECTION 2. PROJECT REQUIREMENTS

A. Both CONTRACTOR and CITY understand and agree that this Agreement is to be executed pursuant to the approval of the City Council of San Antonio by Ordinance Number 2006-06-29-0740 given on June 29, 2006.

B. The total number of new, direct, non-temporary, non-seasonal full-time jobs to be created by CONTRACTOR, as a result of the Project, shall be no less than 22.

C. The total amount of funding that may be granted toward the Project is \$300,000.00, which is to be allocated as follows:

Funding Type	Specific Use	Amount of Funding
COSA Econ. Dev. Grant	Water Utility Infrastructure*	\$200,000.00
COSA Econ. Dev. Grant	Defraying permitting fees	\$100,000.00
Total Project Cost		\$300,000.00 Total

*costs associated with Water Utility Infrastructure shall be those costs as described in Attachment I.

D. The funding provided in Section 2(C) above shall be disbursed or credited thirty days following CONTRACTOR's submission of invoices reflecting actual costs associated with the water utility infrastructure improvements and permitting fees assessed for construction activities at the Facility.

SECTION 3. AGREEMENT PERIOD

This Agreement shall commence upon full execution of this Agreement and shall terminate upon final acceptance of the last disbursement of funds required for the actual costs associated with the water utility infrastructure improvements and permitting fees assessed for construction activities at the Facility so long as such payments do not exceed a cumulative total of THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) as described in Section 2(C) of this Agreement.

SECTION 4. CONTRACTOR PERFORMANCE

A. CONTRACTOR shall complete an economic development project consisting of the construction and operation of a data center, as described in CONTRACTOR's application for tax phase-in assistance, subject to all terms and conditions of this Agreement.

B. CONTRACTOR shall comply with all applicable laws and regulations, and shall perform all activities in accordance with the terms of the Special Conditions specified in Section 16 of this Agreement, and with all other terms, provisions, and requirements set forth herein.

SECTION 5. DEPARTMENT OBLIGATIONS

A. In consideration of full and satisfactory performance of activities required by Section 2 of this Agreement, CITY will disburse grant funds not to exceed \$300,000.00 as described in Section 2(C) to CONTRACTOR in the amounts and at the times specified by Section 3 of this Agreement, and subject to the limitations set forth in this Section 5 and in Sections 14 and 15 below. Notwithstanding any other provision of this Agreement, the total of all grant payments and other obligations incurred by CITY under this Agreement will not exceed the sum of THREE HUNDRED THOUSAND and NO/100 DOLLARS (\$300,000.00).

B. CITY will not be liable to CONTRACTOR or other entity for any costs incurred by CONTRACTOR.

C. CONTRACTOR is only entitled to funds for the costs of actual expenses incurred and not in any amounts exceeding the allocations in Section 2(C) of this Agreement. Allowable costs will be determined in accordance with this Agreement by CITY's Economic Development Department and are defined as direct costs incurred in the construction and improvement of infrastructure related to the provision of utilities to the data center and the costs of permitting fees for construction activities at the Facility. Should CITY determine after payment that a cost is unallowable under this Agreement CONTRACTOR shall reimburse CITY for such payment not later than 30 days after notification by CITY.

SECTION 6. RETENTION AND ACCESSIBILITY OF RECORDS

A. CONTRACTOR shall maintain the fiscal records and supporting documentation for all expenditures of funds to be reimbursed or credited to CONTRACTOR under this Agreement in a manner that conforms to this Agreement. CONTRACTOR shall retain such records, and any supporting documentation, for the greater of: (1) four [4] years from the end of the Agreement period; or (2) the period required by other applicable laws and regulations.

B. CONTRACTOR shall give the CITY, its designee, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or property belonging to or in use by CONTRACTOR pertaining to the funds expended by CONTRACTOR which are reimbursed or credited under this Agreement. Such rights to access shall continue as long as the records are retained by CONTRACTOR. Failure to provide reasonable access to authorized CITY representatives shall give the CITY the right to suspend or terminate the Agreement as provided for in Section 15 and 16, or any portion thereof, for reason of default. All records and other information shall be retained by CONTRACTOR for a period of four (4) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries and open record requests are

completed. CONTRACTOR agrees to maintain such records in an accessible location and to provide citizens reasonable access to such records consistent with the Texas Public Information Act.

SECTION 7. MONITORING

A. CITY reserves the right to confirm CONTRACTOR's compliance with the terms and conditions of this Agreement. CITY will provide CONTRACTOR with a written report of the monitor's findings. If the monitoring report notes deficiencies in CONTRACTOR's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by CONTRACTOR and a reasonable amount of time in which to attain compliance. Failure by CONTRACTOR to take action specified in the monitoring report may be cause for suspension or termination of this Agreement, in accordance with Sections 14 and 15 herein.

B. CONTRACTOR shall provide to CITY a statement with reasonable supporting information evidencing the creation of and filling of the number of jobs required by this Agreement.

SECTION 8. INDEPENDENT CONTRACTOR

It is expressly understood and agreed by the parties hereto that CITY is contracting with CONTRACTOR as an Independent CONTRACTOR, and that CONTRACTOR, its employees and subcontractors are not employees of the CITY.

SECTION 9. CONFLICT OF INTEREST

A. CONTRACTOR shall ensure that no employee, officer, or agent of CONTRACTOR shall participate in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract. CONTRACTOR shall comply with Chapter 171, Texas Local Government Code as well as the CITY's Code of Ethics.

B. Except for eligible administrative costs, no employee, agent, consultant, officer, or elected or appointed official, of either CONTRACTOR or of a subcontractor, who exercises or has exercised any functions or responsibilities or is in a position to participate in decision-making or gain inside information in regard to the activities involved in the Project, shall be permitted to have or obtain a financial interest in or benefit from the Project or any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties. This prohibition shall remain in effect for the duration of the prohibited relationship plus one calendar year thereafter.

SECTION 10. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. CONTRACTOR shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part with funds made available under this Agreement.

B. None of the performances rendered by CONTRACTOR under this Agreement shall involve, and no portion of the funds received by CONTRACTOR under this Agreement shall be used in support of,

) any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

C. CONTRACTOR shall include the substance of this Section 10 in all subgrant agreements.

SECTION 11. LEGAL AUTHORITY

A. Each party assures and guarantees to the other that they possesses the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.

B. The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.

C. CITY will have the right to suspend or terminate this Agreement in accordance with Sections 14 and 15 herein if there is a dispute as to the legal authority, of either CONTRACTOR or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder. CONTRACTOR is liable to CITY for any money it has received from CITY for performance of the provisions of this Agreement if CITY suspends or terminates this Agreement for reasons enumerated in this Section 11.

SECTION 12. LITIGATION AND CLAIMS

) A. CONTRACTOR shall give CITY immediate notice in writing of any action, including any proceeding before an administrative agency, filed against CONTRACTOR arising out the performance of any subcontract hereunder. Except as otherwise directed by CITY, CONTRACTOR shall furnish immediately to CITY copies of all pertinent papers received by Contractor with respect to such action or claim. CONTRACTOR shall notify the CITY immediately of any legal action filed against the CONTRACTOR or any subcontractor, or of any proceeding filed under the federal bankruptcy code. CONTRACTOR shall submit a copy of such notice to CITY within 30 calendar days after receipt. No funds provided under this Agreement may be used in the payment of any costs incurred from violations or settlements of, or failure to comply with, federal and state regulations.

B. CITY and CONTRACTOR acknowledge that CITY is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

SECTION 13. CHANGES AND AMENDMENTS

) A. Except as specifically provided in Section 13(C) of this Agreement, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by both parties to this Agreement upon CITY approval and authorization of CONTRACTOR.

B. It is understood and agreed by the parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as set forth this date, and the terms and conditions of this Agreement.

C. Any alterations, additions, or deletions to the terms of this Agreement required by changes in state law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

SECTION 14. SUSPENSION

A. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, in the event CONTRACTOR fails to comply with the terms of any Agreement with the CITY, CITY shall provide CONTRACTOR with written notification as to the nature of the non-compliance. CITY shall grant CONTRACTOR a sixty (60) day period from the date of the CITY's written notification to cure any issue of non-compliance under such Agreement. Should CONTRACTOR fail to cure any default within this period of time, the CITY may, upon written Notice of Suspension to CONTRACTOR, suspend this Agreement in whole or in part and withhold further payments to CONTRACTOR, and prohibit CONTRACTOR from incurring additional obligations of funds under this Agreement. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and, (3) in the case of partial suspension, the portion of the Agreement to be suspended.

B. In the case of default for causes beyond CONTRACTOR's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the CITY may, in its sole discretion, extend the cure period provided that CONTRACTOR shall: (1) immediately upon receipt of Notice of Suspension advise CITY of CONTRACTOR's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. A suspension under this Section 14 may be lifted only at the sole discretion of the CITY upon a showing of compliance with or written waiver by CITY of the term(s) in question.

D. With the exception of payment for work in progress or materials ordered prior to receiving a Notice of Suspension, CITY shall not be liable to CONTRACTOR or to CONTRACTOR's creditors for costs incurred during any term of suspension of this Agreement.

SECTION 15. TERMINATION

A. CITY shall have the right to terminate this Agreement for non-compliance, in whole or in part, at any time before the date of completion specified in Section 4 of this Agreement whenever CITY determines that CONTRACTOR has failed to comply with any term of any Agreement with the CITY. CITY will provide CONTRACTOR with written notification as to the nature of the non-compliance, and grant CONTRACTOR a sixty (60) day period from the date of the CITY's written notification to cure any issue of non-compliance under such Agreement. Should CONTRACTOR fail to cure any default within this period of time, the CITY may, upon issuance to CONTRACTOR of a written Notice of Termination, terminate this Agreement in whole or in part and withhold further payments to CONTRACTOR, and prohibit CONTRACTOR from incurring additional obligations of funds under this Agreement. Such notification shall include: (1) the reasons for such termination; (2) the effective date of such termination; and, (3) in the case of partial termination, the portion of the Agreement to be terminated.

B. In the case of default for causes beyond CONTRACTOR's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the CITY may, in its sole discretion, extend the

cure period provided that CONTRACTOR shall: (1) immediately upon receipt of Notice of Termination advise CITY of CONTRACTOR's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. Except as provided in Section 15(A), awards may be terminated in whole or in part only as follows:

1. By the CITY (with the consent of the CONTRACTOR) in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated; or
2. By the CONTRACTOR upon written notification to the CITY, setting forth the reasons of such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of partial termination, the CITY determines in its sole discretion that the remaining portion of the award will not accomplish the purpose for which the award was made, the CITY may terminate the award in its entirety under Section 15(A).

D. Upon receipt of Notice of Termination for non-compliance under Section 15(A), CONTRACTOR shall, to the extent possible under its other contractual obligations, cancel, withdraw or otherwise terminate any outstanding orders or subcontracts related to the performance of this Agreement or the part of this Agreement to be terminated and shall cease to incur costs thereunder. Any other work or materials under or part of this Agreement shall be terminated and CITY will not be liable to CONTRACTOR or to CONTRACTOR's creditors for any costs incurred subsequent to receipt of a Notice to Terminate.

E. Notwithstanding any exercise by CITY of its right of suspension under Section 14 of this Agreement, or of early termination pursuant to this Section 15, CONTRACTOR shall not be relieved of any liability to CITY for damages due to CITY by virtue of any breach by CONTRACTOR of any Agreement with CITY. CITY may withhold payments to CONTRACTOR until such time as the exact amount of damages due to CITY from CONTRACTOR is agreed upon or is otherwise determined.

SECTION 16. SPECIAL CONDITIONS AND TERMS (RESERVED)

SECTION 17. SUBAGREEMENTS

A. CONTRACTOR shall ensure that the performance rendered under all subcontracts complies with all terms and provisions of this Agreement as if such performance were rendered by CONTRACTOR. CONTRACTOR shall bear full responsibility for performance by all subcontractors.

B. CONTRACTOR, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, CITY is in no way liable to CONTRACTOR's subcontractor(s).

C. CONTRACTOR assures and shall obtain assurances from all of its subcontractors where applicable, that no person shall, on the grounds of race, creed, color, disability, national origin, sex or religion, be excluded from, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part under this Agreement.

SECTION. 18. DEBARMENT

By signing this Agreement, CONTRACTOR certifies that it will not award any funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs.

SECTION 19. RIGHTS UPON DEFAULT

It is expressly understood and agreed by the parties hereto that any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any Agreement between CONTRACTOR and the CITY or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

SECTION 20. NON-ASSIGNMENT

This Agreement is not assignable. Notwithstanding any attempt to assign the Agreement, CONTRACTOR shall remain fully liable on this Agreement and shall not be released from performing any of the terms, covenants and conditions herein. CONTRACTOR shall be held responsible for all funds received under this Agreement.

SECTION 21. ORAL AND WRITTEN AGREEMENTS

All oral and written agreements between the parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

SECTION 22. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

CITY shall grant relief from performance of the Agreement if the CONTRACTOR is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributed to the fault or negligence of the CONTRACTOR. The burden of proof for the need for such relief shall rest upon the CONTRACTOR. To obtain release based upon *force majeure*, the CONTRACTOR must file a written request with the CITY.

SECTION 23. SURVIVAL OF CERTAIN AGREEMENT PROVISIONS

The following provisions of the Agreement, concerning CONTRACTOR's obligations, shall survive the termination of the Agreement after completion of the Project:

- A. Section 2B (Job Creation)
- B. Section 6 (Records Retention and Accessibility of Records)

Signatures appear on next page.

WITNESS OUR HANDS, EFFECTIVE as of September 1, 2006:

Accepted and executed in two duplicate originals on behalf of the City of San Antonio pursuant to Ordinance Number 2006-06-27-073 dated June 29, 2006, and Lowes Home Centers, Inc. pursuant to the authority of its Senior Vice President.

LOWES HOME CENTERS, INC.
A North Carolina Corporation

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

7/13/06
RCW
KAB
BY: David E. Shelton
Name: David E. Shelton
Title: Senior Vice President

Sheryl L. Sculley
CITY MANAGER

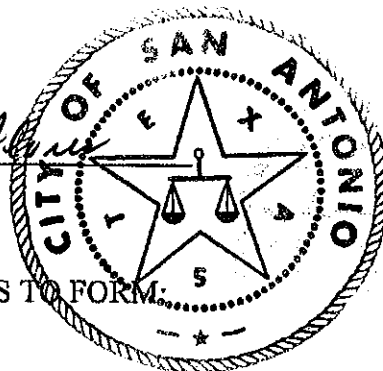
ATTEST:

ATTEST:

Name: Kevin D. Bennett
Title: Kevin D. Bennett
Vice President

Leticia Vacek
CITY CLERK

APPROVED AS TO FORM:



Michael D. Bernard
CITY ATTORNEY

AN ORDINANCE

2013-12-05-0853

AUTHORIZING AN AMENDMENT TO THE TAX PHASE-IN AND CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT WITH LOWE'S HOME CENTER, LLC. ("LOWE'S") TO PROVIDE FOR THE USE OF CONTRACT EMPLOYEES, A REDUCTION IN FULL-TIME POSITIONS AND A REDUCTION IN THE PERCENTAGE OF TAXES TO BE ABATED.

* * * * *

WHEREAS, on June 29, 2006, the City Council authorized a Tax Phase-In Agreement and Chapter 380 Economic Development Program Grant Agreement (the "Agreements") with Lowe's to: (i) establish a data center at 10045 Rogers Run, San Antonio, TX 78251 (the "Project Site"), (ii) invest \$60 million in real and personal property improvements, (iii) and create 22 Full-Time jobs at the Project Site (the "Project"); and

WHEREAS, due to workforce efficiencies and technological advances, Lowe's is seeking to amend the Agreements to provide for the use of contract employees, reduce the required number of full-time employees from 22 to 15, and reduce the amount of abated taxes from 100% to 63%; and

WHEREAS, the City finds that the goals of Chapter 380 continue to be met by assisting Lowe's in undertaking the Project; **NOW THEREFORE**:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

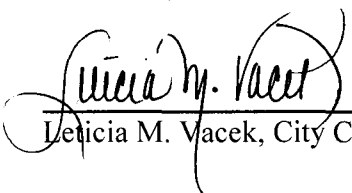
SECTION 1. The terms and conditions of the First Amendment to the Tax Phase-In and Chapter 380 Economic Development Program Grant Agreement (the "Amendment") are hereby approved. The City Manager, or her designee, is authorized to execute said Amendment, a copy of which, in substantially final form, is set out in **Attachment I** and is made a part of this Ordinance. The final copy of the Amendment shall be attached when fully executed.

SECTION 2. This Ordinance shall become effective immediately upon its passage by eight (8) votes or more and upon ten (10) days following its passage if approved by fewer than eight (8) votes.

PASSED AND APPROVED this 5th day of December, 2013.

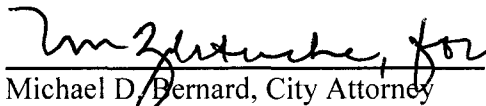

M A Y O R
for Julián Castro

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Michael D. Bernard, City Attorney

Agenda Item:	23 (in consent vote: 7, 8, 9, 10, 11, 12A, 12B, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 31, 32, 34, 36, 37, 38, 39, 40, 41, 42, 43A, 43B, 43C, 43D)						
Date:	12/05/2013						
Time:	10:02:38 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the First Amendment to the Tax Phase-In Agreement and Economic Development Grant Agreement between the City and Lowe's Home Centers, LLC. [Carlos J. Contreras, Assistant City Manager, Rene Dominguez, Director, Economic Development]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor	x					
Diego Bernal	District 1		x				x
Ivy R. Taylor	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x			x	
Joe Krier	District 9		x				
Carlton Soules	District 10		x				

ATTACHMENT I

**FIRST AMENDMENT TO THE TAX PHASE-IN AGREEMENT AND ECONOMIC
DEVELOPMENT GRANT AGREEMENT**

BETWEEN THE CITY OF SAN ANTONIO AND LOWE'S HOME CENTERS LLC

This First Amendment to the Tax Phase-In Agreement and Economic Development Grant Agreement (this "FIRST AMENDMENT") is entered into by and between the City of San Antonio ("CITY"), a municipal corporation governed by the laws of the State of Texas and Lowe's Home Centers, LLC, a North Carolina limited liability company, as successor to Lowe's Home Centers, Inc., a North Carolina corporation ("Lowe's"). Together, CITY and Lowe's may be referred to, herein, as "the Parties."

RECITALS

- A. CITY and Lowe's entered into that certain Tax Phase-In Agreement and Economic Development Grant Agreement (the "Agreements") authorized by City of San Antonio Ordinances Nos. 2006-06-29-0739 and 2006-06-29-0740, passed and approved on June 29, 2006.
- B. Prior to this First Amendment, the Agreements were in full effect and, subject to the terms of this First Amendment, Lowe's was in compliance with all terms and conditions of the Agreements.
- C. The Parties, now seek to amend the terms and conditions of the Agreements as stated in this First Amendment and affirm that all other provisions of the Agreements remain in full force and effect.

AMENDMENT

NOW THEREFORE, the Parties hereby agree and amend as follows:

- 1. Definitions. All capitalized terms used in this First Amendment without definition herein shall have the meanings assigned to such terms in the Agreements.
- 2. Amendment. The Parties hereby mutually agree to amend the Agreements as follows:
 - (A) Section 5(C) of the Tax Phase-In Agreement shall be amended to provide for the definition of Full-Time Job to include positions filled by contract workers provided that such positions meet the wage and benefits requirements of Sections 5(B) and 5(D).
 - (B) Section 5(A)(2) of the Tax Phase-In Agreement shall be amended to provide for the reduction of non-temporary, Full-Time Positions from twenty-two (22) to fifteen (15).
 - (C) Section 6(C) of the Tax Phase-In Agreement shall be amended to provide for a reduction in the abatement percentage from 100% to a maximum of 68%.
 - (D) Section 2(C) of the Economic Development Grant Agreement shall be amended that no further grant payments or fee waivers will be payable to Lowe's for the remainder of the agreement term.

3. Effective Date. This First Amendment shall be effective upon passage of a duly authorized ordinance of the City Council of the City of San Antonio which shall be attached hereto and made a part of this First Amendment.
4. No Other Changes. Except as specifically set forth in this First Amendment, all of the terms and conditions of the Agreements shall remain the same and are hereby ratified and confirmed. The Agreements shall continue in full force and effect and with this First Amendment shall be read and construed as one instrument.
5. Choice of Law. This First Amendment shall be construed in accordance with and governed by the laws of the State of Texas.
6. Counterparts. This First Amendment may be executed in any number of counterparts, but all such counterparts shall together constitute but one instrument. In making proof of this First Amendment it shall not be necessary to produce or account for more than one counterpart signed by each party hereto by and against which enforcement hereof is sought.

WITNESS HEREOF, the parties hereto have executed in triplicate originals this First Amendment on the ____ day of _____ 2013.

CITY OF SAN ANTONIO

a municipal corporation

Sheryl L. Sculley
City Manager

ATTEST:

Leticia Vacek
City Clerk

APPROVED AS TO FORM:

Michael D. Bernard
City Attorney

LOWE'S HOME CENTERS, LLC, a
North Carolina limited liability company,
as successor to Lowe's Home Centers,
Inc., a North Carolina corporation

Name:
Title:

ATTEST:

Name:
Title: